



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Patent Office Board of Appeals

APPLICANT: S.E.L. Huang
SERIAL NO: 10/657,933
FILED: September 9, 2003
FOR: Resiliently Expandable
Cautionary Structure

GAU: 2859
EXAMINER: T.M. Reis
St. Louis, Missouri
Date: January 12, 2006
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BRIEF FOR APPLICANT

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I. Real Parties in Interest

The party in interest in this particular application includes just the inventor, Sunny En Liung Huang, and this application has not been assigned to any other entity.

II. Related Appeals and Interferences

There are no related appeals, or interference proceedings, pertaining to the subject matter of this patent application.

III. Status of Claims

The examiner issued a rejection of the claims of this application on January 19, 2005. Applicant filed an Amendment B on or about April 14, 2005, from the examiner's rejection of the claims. In the Amendment B, the Applicant reduced the number of claims in the application, to claims 1, 2, 5, 10, 11, and 12.

The examiner issued a final rejection on July 12, 2005.

The Applicant filed a Notice of Appeal to the United States Patent and Trademark Office on October 10, 2005. The Notice of Appeal was from the examiner's rejection of Claims 1, 2, 5, and 10-12. It is the final rejection of these claims that are currently subject to this appeal proceeding.

IV. Status of Amendments

There have been no subsequent amendments following the final rejection that issued from the examiner.

V. Claimed Subject Matter

This invention relates to a resiliently expandable cautionary structure 1 (p. 7), and which is mounted, at its lower end, upon a base member 2 (p. 7), which spans a dimension generally diametrically across the bottom rung for the structure 1. At the upper end of the spiral member forming the cautionary structure there is a cross brace 3 (p. 7), which holds the structural integrity for the upper end of the spiral forming the expandable cautionary structure.

Connecting with the upper cross brace 3 (p. 7), is a fastening means 4 (p. 7), which may comprise a strap, that further includes fastening means, such that when the structure is collapsed, against its inherent resiliency, and pushed into a flattened configuration, the strap circumvents or surrounds the flattened structure and adheres the same into that configuration, to facilitate its transit or storage, as when not in use.

There are also provided illuminating means, such as the lights 7 (p. 8), provided along the entire reach of the spiral forming the structure of the device. These illuminating means may comprise light emitting diodes, LEDS, or other type of illuminating means, or even the fiber optic glowing structure, that provides and adds further illumination to the brilliancy of the structure, when employed.

A battery pack, as at 8 (p. 8), may provide the necessary energy to light the LEDS, or the device can be hard wired into a source of electrical energy, as required.

As can be seen in further embodiments for the structure of this expandable cautionary device, as noted in FIGS. 3 and 4, the device can be cylindrically shaped, as shown by the shaped member 9 (p. 9), that may likewise be in a spiral configuration, and which can be collapsed, into a generally lesser height condition, as can be seen in said FIG. 4. In addition, a strap 12 (p. 9), similar to the previous strap 4, is attached at approximately the center 13

(p. 9), of the cross brace 11 (p. 9), such that when the spiral structure is collapsed, the strap can be wrapped around the contracted structure and hold it in its closed condition, as noted.

The cross brace 11 (p. 9), for the structure, as noted, adds reinforcement to the upper end of the spiraled and cylindrical shaped device, to allow it to hold its structure, when erected for usage.

FIG. 5 shows a further embodiment for the expandable cautionary structure, and includes the usage of a locking type device, such as the fitting 16 (p. 10), that cooperates with the second part of a fastening means, such as the female button 18 (p. 10), that are used for interlocking together so as to either threadedly engage, or connect together as a bayonet lock, for holding the cautionary structure into its closed configuration, as when not in use, and as noted in FIG. 6.

Thus, any type of fastening means can be used between these components, such as a bayonet lock, snap button, threaded engagement or the like, to hold the cautionary structure into its condensed position, as for storage or when not in usage.

The claims of the application under appeal describe the type of structural matter as summarized herein.

VI. Grounds of Rejection

The examiner rejected claims 1, 2, 5, and 10 under 35 U.S.C. §103(a) as being unpatentable over the prior patent to Phillips (U.S. Pat. No. 6,048,590), in view of Headley (U.S. Pat. No. 6,164,304), Byers (U.S. Pat. No. 6,132,063), Shu (U.S. Pat. No. 6,109,764), and Shoemaker (U.S. Pat. No. 3,132,624).

The examiner further rejected claims 11 and 12 under 35 U.S.C. §103(a), as being unpatentable over Phillips (U.S. Pat. No. 6,048,590), in view of the previous Byers, Shu, and Shoemaker patents.

Applicant has contested this basis for rejection upon a variety of grounds as will be discussed hereinafter.

VII. Argument

Claims 1, 2, 5 & 10:

The examiner rejects claims 1, 2, 5 & 10, under Title 35 U.S.C. §103(a). The examiner states that Phillips renders the claimed invention unpatentable, when viewed with Headley, Byers, Shu, and Shoemaker.

Initially, when you make all the changes to Phillips in view of the variety of other patents, when you complete such hypothetical changes, you still end up with a spiral Christmas tree construction.

Secondly, the examiner has taken language liberty with what he sees in Phillips, since Phillips describes in his patent that his reference numeral 10 is exactly what it shows, a spiral Christmas tree construction. Phillips does not describe that his tree is a resiliently expandable structure 10, as claimed by the examiner. In addition, the adjustable height of element 22, shown in Phillips, is not a base member, comparable to what is shown and described, and claimed for the current invention. In the current invention, the base member is at the total bottom of the structure. In Phillips, it is simply an upward hub element to which the tether units can be tied. Again, this is totally unrelated to Applicant's invention. In addition, Phillips has a cap element 21. The examiner calls it a cross brace. Element 21 of Phillips is exactly what it identifies, a cap for his Christmas tree, and it is not any type of a cross brace that can be used to hold the collapsed tree in a locked position, as is done with the current invention. Although, Phillips does put a strand of Christmas tree lights, upon its Christmas tree, but for an entirely different purpose.

Thus, even if you take a polymer strap from the umbrella of Headley, which in Headley is really identified as a tie strap 28, and somehow try to adapt this into the structure of Phillips, in a manner which is just not rendered so obvious in view of these two prior art, you still would not have answering structure to what is claimed for Applicant's invention. Headley shows a very wide band 28, which when the umbrella is collapsed, it wraps around the umbrella,

and its entire height, in the manner as shown in FIG. 3, and this is not what is shown and described for Applicant's invention.

Byers may show decorative lights 82, which are described as a string of lights 84, in Byers specification, whereas Applicant's lights are LEDS, mounted within its spiral shaped structure 14, which is really not what is shown or described in the Byers reference.

Shu simply discloses decorative lampstrings, and sockets therefore. This still does not show answering structure to what Applicant has developed.

Finally, the examiner cites Shoemaker, for showing a collapsible device. It is a collapsible signal device. But, obviously, Shoemaker is made of a flexible conical sleeve, made of material which is really not described in the Shoemaker patent, and which materials mounted upon the compression spring 36, but primarily for use for furnishing and illumination from its reflector 41, at the top of the device, and not entirely along its height, as claimed by Applicant.

Hence, if you go through the gymnastics of the actual and identified structure of the various prior art cited by the examiner, and somehow use this prior art to modify Phillips, you just are not going to end up with the same structure as claimed by Applicant, and in fact, you are simply going to have a spiral Christmas tree, that has a wide tie strap 28 almost extending its full height, as shown in Headley, and with a reflector at the top, as suggested by Shoemaker. But, you will not have a collapsible and resilient expandable cautionary structure, that incorporates a base member at its bottom, a cross brace at the top, a strap that has sufficient length to span at least the diameter of the structure when collapsed, and not to surround it, as suggested by the examiner, and with illuminating means that are integral to the band, and charged by a battery pack to illuminate the device when it is erected, and expanded, into a cautionary structure configuration.

It is submitted that the prior art just does not suggest how Phillips could be modified, to come up with the identified type of structure as claimed by the Applicant. See the case of *In re Geiger*, 815 Fed. 2nd 686 (Fed. Cert. 1987).

Claims 11 and 12:

The examiner also rejected claims 11 and 12 of this application, once again under Title 35 U.S.C. §103(a), as also being unpatentable over Phillips, in view of Say, Byers, Shu, and Shoemaker. Phillips has already been described, and the inaccuracy of the examiner's interpretation of what Phillips discloses, and identifies his components, as the basis of the examiner's rejection of select components of Applicant's identified claims. By way of further example, the examiner states that Phillips shows a band formed of resilient polymer material, saying that it is described in the Abstract, of Phillips, but if you read the Abstract of Phillips, there is nothing in it that describes any type of a band of resilient polymer material. To the contrary, Phillips defines the use of tether wires, for adjustably tethering its Christmas tree into an erected position, but describes nothing as suggested by the examiner. There just is no base structure in Phillips, other than the Christmas tree stand 30.

Applicant has already reviewed what is shown and described in Byers, Shu, and Shoemaker, and how these really do not suggest any modifications to a Phillips type of structure, to make Applicant's claimed invention so obvious.

The examiner further cites the reference to Say, as an indicator cap that can be modified into the Phillips structure, in lieu of its cap element 21, and somehow then make Phillips function in the manner of Applicant's invention. First of all, if you look at the Say cap, there is no way it can be located into the top of Phillips, and engage something downwardly near its Christmas tree stand, in order to hold the tree in closure. Furthermore, the indicator cap of Say is for use in the door of a washing machine, apparently to provide an indication as to the type of action being conducted by the washing machine and how much of the rinse agent is being pumped into the machine, during its usage. Certainly this has nothing to do with Applicant's invention, nor does it even remotely suggest that the tree of Phillips could be modified to include a washing machine indicator cap, to even come up with anything remotely related to what Applicant claims in claims 11 and 12 of this current application.

Hence, not only is the art as applied by the examiner totally unrelated, which would not even provide to one skilled in the art a suggestion as to how the art may be modified to come up with answering structure, but even more so, should such structures be applied, if that can even be done, you still would not have the claimed invention of Applicant, which is to provide a resiliently expandable cautionary structure, as defined.

It is believed that the particular structure as claimed in the remaining claims of this application for the resiliently expandable cautionary structure of this invention, is just not so suggested by the prior art, whether it be viewed individually, or even possibly in combination, as attempted by the examiner, to come up with anything related to Applicant's invention.

VIII. Conclusion

It is submitted that patentable subject matter is set forth in the remaining claims of this application. It is believed that the claimed subject matter is just not rendered so obvious, to one of ordinary skill in the art, nor does the art even suggest how it can be combined, particularly for modifying Phillips' Christmas tree, to come up with anything even related to what Applicant has developed. It is just not seen how the prior art can be modified, to provide for any realistic adaptation into its structure to furnish a resiliently expandable cautionary structure as defined and claimed in this particular invention.

In view of the foregoing, it is submitted that patentable subject matter is set forth in the remaining claims 1, 2, 5, and 10-12, as described herein.

The Board's review of this matter would be appreciated.

Enclosed is a check in the amount of \$250.00, covering the cost for this appeal.

If any additional charges are due, please debit our deposit account No. 040731.

Respectfully submitted,

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APPENDIX

1. A resiliently expandable cautionary structure, comprising:
 - a structure, having an inherent spiral configuration formed of a band of resilient material;
 - a base member, having a span of at least the largest diameter of said structure, and joining said structure at one or more points;
 - a cross brace, having a span of at least the narrowest diameter of said structure, joining said structure at two or more points, and located opposite said base member, said cross brace securing temporarily to said base member;
 - a strap having sufficient length to span at least the diameter of said structure when collapsed, a width narrower than the width of said base member, and a fixed end joining said cross brace and the opposite end free, co-operating hook and pile fasteners with one segment of said hook and pile located at the fixed end of said strap and a second segment of said hook and pile located at the free end of said strap, whereby said strap extends from said cross brace, wraps the diameter of said structure when contracted, returns to said cross brace, and said second segment secures to said first segment;
 - an illuminating means, integral to said band and regularly arrayed at least partially along said band and is one of light emitting diodes or fiber optic glowing devices; and,
 - a battery pack connecting to said illuminating means, locating upon said base member, and providing energy for said illuminating means.
2. The structure of claim 1 wherein said structure has one of a generally conical shape with the largest diameter of the conical shape upon said base member or a generally cylindrical shape with said base member and said cross brace each spanning at least the diameter of said structure.
5. The structure of claim 1 wherein said strap is selected from the group consisting of leather, metal, polymer, rubber, rope, and elastic.

10. The structure of claim 1 wherein said structure is formed of polymer material.

11. A resiliently expandable cautionary structure, comprising:
a structure, having an inherent spiral configuration formed of a band of resilient material;

a base member, having a span of at least the largest diameter of said structure and a generally centered fitting, and joining said structure at one or more points;

a button, having a span of at least the narrowest diameter of said structure, able to be rotated about the vertical axis of said structure, and located atop said structure and opposite said base member, said button securing temporarily to said base member;

said fitting and said button cooperating by one of said fitting having a generally cylindrical shape and internal threading that engages with external threading of said button, or said fitting engaging said button as a bayonet lock;

an illuminating means, integral to said band and regularly arrayed along at least some length of said band and is one of light emitting diodes or fiber optic glowing devices; and,

a battery pack communicating with said illuminating means, locating upon said base member, and providing energy for said illuminating means;

whereby said button cooperates with said fitting to releasably secure said structure in a contracted position.

12. The structure of claim 11 wherein said structure is one of a generally conical shape with the largest diameter of the conical shape proximate to said base member and said button is located in the apex of the conical shape, or a generally cylindrical shape having external threading that cooperates with internal threading of said button.